

ST 02-0141-GIL 06/27/2002 TELECOMMUNICATIONS EXCISE TAX

The language of the Mobile Telecommunications Sourcing Conformity Act, P. A. 92-0474, indicates that all charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider are authorized to be taxed regardless of where the mobile telecommunications services originate, terminate or pass through. (This is a GIL).

June 27, 2002

Dear Xxxxx:

This letter is in response to your letter dated April 18, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

AAA corporation that specializes in tax compliance software that is used by telecommunications companies, in order that they may comply with federal, state, and local tax law.

We are currently updating a database for the State of Illinois pertaining to the impact of the Federal 'Mobile Telecommunications Sourcing Act' on the taxation of cellular telephone calls. Pursuant to *State of Illinois House Bill 843*, which reads: *'mobile telecommunications services are deemed to have occurred at the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through'* we ask you to answer the following questions:

1. Are cellular telephone calls that originate and terminate in ANY state considered taxable, provided that a customer's 'place of primary use' is located in Illinois?
2. For example, if a customer has a 'place of primary use' in Illinois, and the customer travels to Maine, and makes a cellular call from Point A in Maine to Point B in Maine, would such a call be treated as subject to tax in Illinois?
3. For example, if a customer has a 'place of primary use' in Illinois, and the customer travels to Maine, and makes a cellular call from Point A in Maine to Point B in Vermont, would such a call be treated as subject to tax in Illinois?

Please respond to this query in writing, by e-mail) or fax. If you are unable to verify this information, please forward this inquiry to the party responsible for MTSA information.

Thank you in advance for your timely response.

Illinois House Bill 843 was signed into law as Public Act 92-0474. The measure, known as the Mobile Telecommunications Sourcing Conformity Act ("Act"), becomes effective on August 1, 2002. The Act was passed for the purpose of implementing the federal Mobile Telecommunications Sourcing Act, codified at 4 U.S.C. Sections 116 through 126.

P. A. 92-0474 provides that the Act shall apply to "any tax, charge, or fee levied by the State or a taxing jurisdiction within this State as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services, regardless of whether the tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee." Section 20(b) of the Act provides that "[a]ll charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under this Act are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services." "Place of primary use" means "the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be: (i) the residential street address or the primary business street address of the customer; and (ii) within the licensed service area of the home service provider."

As you know, the Telecommunications Excise Tax Act imposes a tax upon the act or privilege of originating or receiving in this State intrastate or interstate telecommunications by a person in this State purchased at retail from a retailer by such person. Therefore, ordinarily, cellular phone communications that do not originate or are not received in Illinois would not be subject to tax. However, the language of the Mobile Telecommunications Sourcing Conformity Act, as set forth above, indicates that all charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider are authorized to be taxed regardless of where the mobile telecommunications services originate, terminate or pass through. Therefore, cellular telephone calls that originate and terminate in any state would be taxable to an Illinois customer if Illinois is the customer's place of primary use. If a customer has a place of primary use in Illinois, but makes a phone call from one location in Maine to another location in Maine, or from a location in Maine to a location in Vermont, the calls will be subject to tax, even though the calls neither originated nor were received in Illinois.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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